

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHICAGO TRUCK DRIVERS, HELPERS AND  
WAREHOUSE UNION (INDEPENDENT)  
PENSION FUND, a Trust, and JACK  
STEWART, its Fund Manager and one of its  
Trustees,

Plaintiffs,

v.

D.M.S. TRUCKING, INC., an Illinois  
Corporation,

Defendant.

Case No. 07 CV 4750  
Judge Dow

**PLAINTIFFS' MOTION FOR JUDGMENT**

Plaintiffs CHICAGO TRUCK DRIVERS, HELPERS, AND WAREHOUSE WORKERS UNION (INDEPENDENT) PENSION FUND and JACK STEWART, Trustee (collectively "Fund"), through counsel, having previously moved for summary judgment under Fed.R.Civ.P. 56 against Defendant D.M.S. TRUCKING, INC ("D.M.S."), hereby move for judgment to be entered in the Fund's favor pursuant to Fed.R.Civ.P. 56(e)(2). In support of this motion Plaintiffs state the following:

1. Plaintiffs' filed a motion for summary judgment with all required supporting documents on February 22, 2008.
2. The Court set a briefing schedule requiring Defendant's response by March 20, 2008.
3. Defendant failed to provide a timely response to Plaintiff's motion for summary judgment.

4. On at least four occasions prior to Plaintiff filing its motion for summary judgment, Defendant unequivocally expressed its intent not to defend against a judgment being entered in favor of the Fund. *See*:
- a. Exhibit A: Transcript of Status Hearing before Judge Gottschall on December 5, 2007 at 9:30 a.m., p. 2, lines 9 – 21.;
  - b. Exhibit B: Transcript of Status Hearing before Judge Dow on January 8, 2008 at 2:45 p.m., p. 2, lines 10 – 25, p. 3, lines 10 – 25.;
  - c. Exhibit C: Defendant's Notice of Intention Not to Defend or Contest Potential Motion for Default Judgment [R. Doc. No. 21];
  - d. Exhibit D: Email response from Defendant's attorney regarding intent not to respond to Plaintiff's motion for summary judgment.

**WHEREFORE**, Plaintiffs respectfully request that this Court enter summary judgment in their favor and against Defendant for the amount of the withdrawal liability assessment due and owing in accordance with the statute, together with additional amounts for interest, an amount equal to the greater of interest or statutory liquidated damages, and attorney's fees and costs pursuant to ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2). Should the Court enter summary judgment in Plaintiffs' favor, Plaintiffs request 90 days from the date of the Court's summary judgment order to establish these additional amounts by declaration/affidavit for the entry of a final money judgment.

Respectfully submitted,

/s/ M. Garrett Hohimer  
M. Garrett Hohimer  
*Attorney for Plaintiffs*

Thomas Angell  
William W. Leathem  
M. Garrett Hohimer  
Jacobs, Burns, Orlove, Stanton & Hernandez  
122 S. Michigan Ave., Suite 1720  
Chicago, IL 60603  
(312) 327-3461

**CERTIFICATE OF SERVICE**

I certify that on March 27, 2008, I electronically filed the foregoing **Plaintiffs' Motion for Judgment** with the Clerk of the court using the CM/ECF system which sent notification of such filing to the following counsel of record:

**Christopher P. Lyons**  
Peters & Lyons, Ltd.  
7035 Veterans Blvd.  
Burr Ridge, IL 60527  
630.887.6902

/s/ M. Garrett Hohimer  
M. Garrett Hohimer

# Exhibit A

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CHICAGO TRUCK DRIVERS, HELPERS  
AND WAREHOUSE UNION (INDEPENDENT)  
PENSION FUND,

Plaintiff,

-vs-

D.M.S. TRUCKING, INC.

Defendants.

No. 07 C 4750

Chicago, Illinois

December 5, 2007

9:30 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JOAN B. GOTTSCHALL

APPEARANCES:

For the Plaintiff: JACOB, BURNS, ORLOVE, STANTON &  
HERNANDEZ  
122 South Michigan Avenue  
Chicago, Illinois 60603  
BY: MR. MARK GARRETT HOHIMER

For the Defendant: DeANO & SCARRY, LLC  
53 West Jackson Boulevard  
Chicago, Illinois 60604  
BY: MR. PATRICK FRASOR MORAN

COLETTE M. KUEMMETH, CSR, RMR  
Official Court Reporter  
219 South Dearborn Street  
Room 2328A  
Chicago, Illinois 60604  
(312)554-8931

(Proceedings heard in open court:)

THE CLERK: Case No. 10. 07 C 4750, Chicago Truck Drivers' Pension Fund versus D.M.S. Trucking.

MR. HOHIMER: Good morning, your Honor. Garrett Hohimer on behalf of the pension fund.

MR. MORAN: Patrick Moran on behalf of D.M.S. Trucking.

THE COURT: What's happening?

MR. MORAN: Judge, I just actually informed counsel to say I just finally resolved this with my client. My client is not going to -- well, she's going to roll over and play dead. This is a sole proprietorship where the proprietor has died. The widow is managing the companies. We're going to accept either default or uncontested judgment, depending what the plaintiff would like, so we'll work that out.

THE COURT: When do you want to come back?

MR. MORAN: It will be a joint motion, so we'll notice it up together whenever that may be. I expect probably -- we'll probably come back after the first of the year.

MR. HOHIMER: Right. Early January.

THE COURT: I'll set a status for mid to late January. Don't bring it on the status date, come before the status date.

1 THE CLERK: January 16, 9:30.

2 MR. HOHIMER: Thank you.

3 MR. MORAN: Thank you, your Honor.

4 (End of proceedings.)

5 C E R T I F I C A T E

6  
7 I certify that the foregoing is a correct transcript  
8 from the record of proceedings in the above-entitled case on  
9 December 5, 2007.

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13 *Carole M. Kennedy*  
14 Court Reporter  
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# Exhibit B

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CHICAGO TRUCK DRIVERS,  
HELPERS, AND WAREHOUSE  
UNION, et al.,

Plaintiffs,

v

D.M.S. TRUCKING, INC.,

Defendant

)  
) Docket No. 07 C 4750  
)  
) Chicago, Illinois  
) January 8, 2008  
) 2:45 p.m.  
)  
)  
)  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE ROBERT M. DOW, JR.

PRESENT:

For the Plaintiff:

MARK G. HOHIMER  
Jacob, Burns, Orlove Stanton  
& Hernandez  
122 South Michigan Avenue  
Chicago, Illinois 60603

For the Defendant:

CHRISTOPHER P. LYONS  
Peter & Lyons, Ltd.  
7035 Veterans Boulevard  
Suite B  
Burr Ridge, Illinois 60527

Court Reporter:

Lois A. LaCorte  
219 South Dearborn Room 1918  
Chicago, Illinois 60604  
(312) 435-5558

1 THE CLERK: 07 C 4750, Chicago Truck Drivers v D.M.S.  
2 Trucking.

3 MR. HOHIMER: Good afternoon, your Honor, Garrett  
4 Hohimer for Chicago Truck Drivers Union Funds, plaintiffs.

5 MR. LYONS: Good afternoon, Christopher Lyons on behalf  
6 of the defendant.

7 THE COURT: Good afternoon, counsel and are we still  
8 where we were when the status report was filed where you have had  
9 discussions and talking about uncontested judgment?

10 MR. LYONS: We had I think a productive discussion just  
11 out in the hall and basically, we're still where we are at in  
12 terms of I don't think this case is going to be litigated much.  
13 What we would like to do and what counsel has indicated he is  
14 willing to do is if I can informally without running up a lot of  
15 fees provide him with financial information that would satisfy  
16 the trustees' due diligence obligations to find out if this  
17 defendant is, as I said, a rock from which no blood can be  
18 gained, perhaps we could dispose of it that way, but at bottom  
19 it's either going to go away that way or we just don't have the  
20 resources to put up that much of a fight.

21 So I guess I would like some additional time to try to  
22 informally get that information to him and he can make a  
23 recommendation with his people and then we can see where we go  
24 from there and if that resolves it, fine. If not, we will have  
25 to fall on our sword in some capacity.

1 THE COURT: That sounds productive if counsel is  
2 agreeable to that.

3 MR. HOHIMER: I think that's fine, your Honor. We are  
4 hopeful that we will get the information fairly quickly, turn it  
5 around on our end, and we will probably poke around a little bit  
6 as far as seeing what assets are there, but we don't foresee any  
7 reason to try to pierce the corporate veil or go after her  
8 personally. It's a pretty sad story that his client has and it  
9 appears legitimate.

10 The question at hand is whether she is going to consent  
11 to a judgment or whether they're going to probably withdraw the  
12 answer that's been filed at this point to allow it to go into  
13 default. I have never handled anything like that --

14 THE COURT: Me either.

15 MR. HOHIMER: -- but I suppose that that's how it would  
16 be procedurally accomplished if they went to default rather than  
17 consent.

18 MR. LYONS: Well, I need to review the procedural  
19 aspects and the ramifications of that. I mean, I guess partly  
20 it's my hope that if we satisfy to the extent, the case might go  
21 away without a judgment in any capacity.

22 MR. HOHIMER: We won't do that. We will have to go to  
23 a judgment.

24 MR. LYONS: But in any event, we will know that sooner  
25 than later.

1 THE COURT: I think it makes sense to let you all  
2 informally without running up any substantial costs to go  
3 ahead -- do you think 30, 45 or 60 for a status date? How long  
4 do you think it will take?

5 MR. LYONS: I have taken over this case from an  
6 attorney that left my office. I'll pick the middle just because  
7 it's the middle. I think that's reasonable.

8 THE COURT: Let's set a status for 45 then, and if it  
9 turns out you're not ready, you can come in and we will continue  
10 it. That's not a big deal if you're close.

11 MR. HOHIMER: Very good. I appreciate that. If it  
12 goes much beyond that, the funds will want to start to compel  
13 discovery.

14 THE COURT: You will meet your ultimate day at that  
15 point.

16 MR. LYONS: I understand that certainly.

17 THE COURT: If you can get there before without causing  
18 either side to burn a lot of litigation, that's all the better so  
19 I'm happy to let you do that.

20 MR. HOHIMER: Thank you, your Honor.

21 THE COURT: How do you feel about the first week of  
22 March, is that okay?

23 MR. HOHIMER: That's fine with me.

24 THE COURT: Okay, let's do the first week of March then.

25 THE CLERK: March 6th, 9 a.m.

1 MR. LYONS: Very good, thank you.

2 THE COURT: Thank you. And if you're able to resolve  
3 this before then, you can let me know in some fashion.

4 MR. HOHIMER: We will motion up either a consent  
5 judgment or motion to compel.

6 THE COURT: If it turns out in 30 days you're set, go  
7 ahead and motion that up and then we won't have to worry about  
8 this in March.

9 MR. HOHIMER: Thank you, your Honor.

10 THE COURT: Very good, thank you.

11 \* \* \*

12 I certify that the above is a true and correct  
13 transcript of proceedings had in the above matter.

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Lois A. LaCorte

# Exhibit C

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**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CHICAGO TRUCK DRIVERS, HELPERS  
AND WAREHOUSE UNION  
(INDEPENDENT) PENSION FUND  
a Trust, and JACK STEWART, its  
Fund Manager and one of its Trustees

Plaintiffs,

v.

D.M.S. TRUCKING INC., an Illinois Corporation,

Defendant.

No. 07 C 4750

Judge Dow

**NOTICE OF INTENTION NOT TO DEFEND  
OR CONTEST POTENTIAL MOTION FOR DEFAULT JUDGMENT**

Defendant D.M.S. TRUCKING, INC. (DMS), hereby submits the following  
notice to counsel and the court:

Although it technically remains an "active" corporation in good standing with the  
State of Illinois, DMS ceased all active operations on or about June 1, 2006. It currently  
has only nominal assets, and has insufficient resources to litigate the instant action, let  
alone satisfy a potential judgment. Accordingly, although it has technically denied

~~liability to the Plaintiff Funds in the various specific amounts claimed and continues to do~~

so, it is unable, as a practical matter, to further defend itself against liability in this case.

Therefore, DMS hereby serves notice that it does not intend to further contest  
liability in this action. DMS further acknowledges that its inability to "otherwise defend"  
itself further in this proceeding renders it vulnerable to a default judgment against it

pursuant to Rule 55 of Fed. R. Civ. P., and hereby advises that it does not intend to contest or oppose any potential motion for default judgment.

However, DMS reserves all rights to participate (to the extent it is able to afford to do so) in any post-judgment proceedings, including, but not limited to, citations to discover assets, and to oppose and defend against any potential attempt by Plaintiffs to collect any judgment from Ms. Christine Szczupaj, DMS's current President and the widow of its former President and shareholder, or impose personal liability for same upon Ms. Szczupaj.

Respectfully Submitted,

/s/ Christopher P. Lyons  
Christopher P. Lyons

Christopher P. Lyons  
PETERS & LYONS, LTD.  
7035 Veterans Blvd.  
Burr Ridge, Illinois 60527  
(630) 887-6902



# Exhibit D

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**Garrett Hohimer**

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**From:** Chris Lyons [clyons@peterslyons.com]  
**Sent:** Friday, February 29, 2008 8:35 AM  
**To:** Garrett Hohimer  
**Subject:** RE: DMS Response

Garrett--

I think the judge's order made the need for this moot. Next week's status has been cancelled, and I'm already on record with my "notice of intention not to defend." At this point, anything I do on this case would be adverse to my client in at least one of two ways: 1) it raises my fees and 2) gets judgment entered against them that much faster. You guys will have judgment in a matter of weeks, and while I'm resigned to having to allow that to happen, I am uncomfortable with "helping" you, by extending what I would ordinarily regard as a simple courtesy phone call to Ms. Kinney.

ps. congratulations on your engagement. I saw your picture and announcement in my local paper yesterday!

-----Original Message-----

**From:** Garrett Hohimer [mailto:GHohimer@jbosh.com]  
**Sent:** Thursday, February 28, 2008 9:48 AM  
**To:** Chris Lyons  
**Subject:** DMS Response

Chris,

If you would please call Theresa Kinney, Judge Dow's Deputy, and let her know you do not intend to respond, she can amend the briefing schedule and we can hopefully avoid the wait and the additional status call next week.

Theresa Kinney  
 (312) 435-5668  
 Room: 1914

Best,

Garrett

---

M. Garrett Hohimer  
 Jacobs, Burns, Orlove, Stanton & Hernandez  
 122 South Michigan Avenue, Suite 1720  
 Chicago, IL 60603-6145  
 312.327.3461  
 312.580.7175 Fax

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3/27/2008

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3/27/2008